***United States Court of Appeals***
***for the***
***District of Columbia Circuit***

# TRANSCRIPT OF RECORD

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## Court of Appeals of the District of Columbia.

APRIL TERM, 1925.

**No. 4309** 218

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B. M. KNOBEL, PLAINTIFF IN ERROR,

*vs.*

SEABOARD AIR LINE RAILWAY CO., A CORPORATION.

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IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA.

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FILED MARCH 20, 1925.

PRINTED JUNE 5, 1925.

# Court of Appeals of the District of Columbia.

APRIL TERM, 1925.

## No. 4309.

B. M. KNOBEL, PLAINTIFF,

*vs.*

SEABOARD AIR LINE RAILWAY CO., A CORPORATION,
DEFENDANT.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 21, 1925.

# Court of Appeals of the District of Columbia.

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No. 4309.

B. M. KNOBEL, Plaintiff in Error,

vs.

SEABOARD AIR LINE RAILWAY CO., a Corporation.

---

1 Municipal Court of the District of Columbia.

No. 113,935.

B. M. KNOBEL, Plaintiff,

vs.

SEABOARD AIR LINE RAILWAY CO., a Corporation, Defendant.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

Be it remembered that in the Municipal Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

2 *Bill of Particulars.*

Filed February 6, 1925.

In the Municipal Court of the District of Columbia.

No. 113,935.

B. M. KNOBEL, Plaintiff,

vs.

SEABOARD AIR LINE RAILWAY CO., a Corporation, Defendant.

*Bill of Particulars.*

The plaintiff sues the defendant for $432.13, due to negligence caused by delay on 420 hampers of cabbage in car FGEX 31203, the property of the plaintiff, delivered by the plaintiff's agent to the defendant on January 22nd, 1925, at Palmetto, Florida, for transportation and delivery to the plaintiff at Potomac Yards, Va., and subsequently diverted to New York City, N. Y.

Wherefore the plaintiff claims $432.12, besides costs.

EDW. L. HUNTER,
*Attorney for Plaintiff.*

*Memorandum.*

* * * * * * *

Summons issued February 11, 1925. Copy of Bill of Particulars and summons served on the defendant, Seaboard Air Line Railway Company, a corporation, by leaving same with F. Johnston, General Counsel, February 13, 1925.

3 *Motion to Quash Service and Affidavit.*

Filed February 20, 1925.

* * * * * * *

Now comes the Seaboard Air Line Railway Company, a corporation, and appearing specially by its attorneys, Hamilton and Hamilton, for the purposes of this motion and for no other purpose, and moves the court to quash the service of summons upon Mr. Forney Johnston in the above entitled suit, for the reasons following:

1. That the said Seaboard Air Line Railway Company is not doing or transacting business in the District of Columbia, and that the only activity of the said Seaboard Air Line Railway Company in the District of Columbia is incident to the solicitation of traffic, and in the services rendered it by Mr. Forney Johnston, General Counsel.
2. That the said Seaboard Air Line Railway Company is a common carrier by railroad, organized under the laws of the State of Virginia, and engaged in interstate commerce; that the requirement that the said Seaboard Air Line Railway Company submit to this suit in the District of Columbia unreasonably obstructs and unduly burdens interstate commerce; that requirement that the Seaboard Air Line Railway Company submit to this suit in the District of Columbia deprives the said Seaboard Air Line Railway Company of due process of law; that the said Seaboard Air Line Railway Company is not subject to this suit in the District of Columbia.

HAMILTON & HAMILTON,
*Attorneys Appearing Specially for the*
*Seaboard Air Line Railway Company.*

* * * * * * *

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me a Notary Public in and for the District aforesaid, G. W. Vierbuchen, who being first duly
4 sworn, deposes and says:

1. That he is the District Passenger Agent of the said Seaboard Air Line Railway Company (hereinafter called the Seaboard Company); that the said Seaboard Company is a corporation organized under the laws of the State of Virginia, and having its offices at Richmond, Virginia; that the said Seaboard Company is solely engaged in the business of common carrier of freight and passengers for hire in intra and interstate commerce; that it owns and operates railroad lines in and through the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama.

2. That the said Seaboard Company does not own nor operate any railroad line within the District of Columbia; nor at any place nearer thereto than Richmond, Virginia; that the said Seaboard Company does not operate any railroad trains in the District of Columbia, and does not engage in the business of common carrier in said District.

3. That the said Seaboard Company does not maintain any office in the District of Columbia, nor does it employ any agents in the District of Columbia for the conduct of any of its business or affairs, except as follows:

The Seaboard Company in connection with the Chesapeake & Ohio Railway Company, a corporation, occupies office space at 714 14th Street, Northwest, Washington, D. C.; that this office is in charge of G. W. Vierbuchen, its District Passenger Agent, and certain other assistants and employees; that the said G. W. Vierbuchen (who is also Traffic Representative of the Richmond, Fredericksburg & Potomac Railway Company, a corporation, hereinafter called the Richmond Company, is exclusively employed by the Seaboard Company to solicit freight and passenger business over lines of the Seaboard Company located outside of the District of Columbia; that
(with the exception noted in Pargraph 5 hereof) the other
5 representatives of the Seaboard Company at 714 14th Street,
Northwest, Washington, D. C., are engaged in and employed by the Seaboard Company for the purpose of soliciting passenger and freight business for the lines of the Seaboard Company outside of the District of Columbia; that the Seaboard Company is not the only carrier transporting passengers and freight south from Richmond, Virginia, and to secure such business originating in Washington, D. C., and north thereof, the Seaboard Company has representatives in Washington, D. C., whose function is to induce the diversion of such business to the lines of the Seaboard Company at Richmond, Virginia; that neither the passengers nor the freight secured by these representatives for the Seaboard Lines south of the District of Columbia are carried by the Seaboard Company in the District of Columbia, but they are received, transported and discharged by the Seaboard Company wholly outside of the District of Columbia.

4. That the said Richmond Company, a Virginia Corporation, engaged in the District of Columbia in the business of a common carrier of freight and passengers, maintains at the above address, 714 14th Street, Northwest, a ticket office for the sale of tickets. That

the said G. W. Vierbuchen, of whom mention has been made, is Traffic Representative of the said Richmond Company, and Joseph Hurney, a representative of the Seaboard Company at 714 14th Street, Northwest, Washington, D. C. is also a City Ticket Agent of the Richmond Company. That the said Richmond Company, at the said office, through its said Ticket Agent, sells the usual form of railroad passenger coupon tickets, on which is indicated by printed legend the issue of the said tickets by the Richmond Company; that the said Richmond Company's coupon tickets entitle the purchaser to passage over the lines of the Richmond Company from Washington, D. C. to Richmond, Virginia (by virtue of one coupon), and also from Richmond, Virginia (by virtue of another coupon),
6 over the line of the Seaboard Company to other points, none of them within the District of Columbia; that the said coupon tickets consist of a form of contract between the passenger and the Richmond Company, and coupons attached; that in addition to the Richmond Company coupon for passage from Washington to Richmond, as a part of the said ticket is a coupon showing issuance by the Richmond Company but entitling the purchaser to passage over the line of the Seaboard Company from Richmond to some other point (not within the District of Columbia). That such ticket contains a separate coupon for passage over the line of each carrier in the through route; that the whole ticket is issued by the Richmond Company, and each coupon so recites, and each coupon is marked "Void if detached." The proceeds from the sale of such coupon tickets are deposited in the bank account of the Richmond Company, and on subsequent interline accounting the Seaboard Company receives a part of the fare proportionate to its participation in the carriage.

5. That the function of the representatives of the Seaboard Company at the office 714 14th Street, Northwest, Washington, D. C., is to secure business for the lines of the Seaboard Company outside of the District of Columbia, and that in furtherance of that object representatives of the Seaboard Company at said office have for sale Seaboard scrip or interchangeable mileage books which are good for passage on any steam railroad in the Continental United States for the number of miles indicated thereon; and also, on occasion, as an accommodation to intending passengers by way of avoiding delay or difficulty at some station on the Seaboard Line, the said representatives make up (by writing in on blanks in a printed form the initial point and destination) and sell a special form of contract for
7 passage between certain points on the Seaboard Lines outside of the District of Columbia, so written in on the said contract. That the reason and purpose of this is to favor patrons of the through route to the South, of which the Seaboard Company operates the portion south from Richmond, and for which coupon tickets are sold in Washington by the Richmond Company, and to induce the selection, as against competing routes, of the through route to the South of which the Seaboard Company operates a part; that all of this is incident to the solicitation of traffic for the Sea-

board Company; that the said representatives of the Seaboard Company are not supplied with, and do not sell, in the District of Columbia, any regular local card tickets of the Seaboard Company.

6. That Mr. Forney Johnston has the designation of General Counsel of the Seaboard Air Line Railway Company and maintains an office in the Southern Building, Washington, D. C. that his functions in respect of the Seaboard Air Line Railway Company are purely advisory in matter of general corporation policy and in representation of the Seaboard Air Line Railroad Company before the Interstate Commerce Commission; that he is not a member of the Bar of the Supreme Court of the District of Columbia nor of the Court of Appeals of the District of Columbia; that he has no duties in respect of, and performs no services in connection with, the operation of the Seaboard Air Line Railway Company as a common carrier in the District of Columbia; that he has no duties and performs no services in connection with claims of shippers or consignees of Seaboard Air Line Railway shipments, and that he transacts no business for the Seaboard Air Line Railway Company local to the District of Columbia.

7. That the said shipment in the declaration herein mentioned originated in the State of Florida and was carried to and delivered at Potomac Yards, Virginia, and that the said Seaboard Company is not engaged in business in the District of Columbia.

G. W. VIERBUCHEN.

8 Subscribed and sworn to before me this 16th day of February A. D., 1925.

[NOTARIAL SEAL.] LOUISE F. DYER,
*Notary Public, D. C.*

9 *Affidavit.*

Filed February 20, 1925.

* * * * * * *

DISTRICT OF COLUMBIA:

B. M. Knobel, being first duly sworn according to law, deposes and says:

I am the plaintiff in the above entitled cause of action and am a resident of the District of Columbia, with offices located at 945 Pennsylvania Ave., N. W., Washington, D. C.

B. M. KNOBEL.

Subscribed and sworn to before me this 20th day of February, 1925.

[NOTARIAL SEAL.] WILLIAM J. SAENGER,
*Notary Public, D. C.*

### *Order.*

Entered February 20, 1925, Minutes 18, page 14.

* * * * * * *

Upon consideration of the defendant's motion filed herein on February 20, 1925, "to quash the service of summons upon Mr. Forney Johnston in the above entitled suit," it is ordered that said motion be, and the same is hereby granted. Whereupon, it is ordered, that service of summons upon Mr. Forney Johnston be, and the same is hereby quashed and held for naught.

### *Assignment of Error.*

Filed March 12, 1925.

* * * * * * *

The court erred in sustaining the motion to quash and vacate the service of process on Forney Johnston, General Counsel, Seaboard Air Line Railway Company, and in quashing said summons.

EDW. L. HUNTER,
*Attorney for Plaintiff.*

### 10 *Order for Record on Appeal.*

Filed March 12th, 1925.

* * * * * * *

The Clerk will please prepare record for appeal, in accordance with order of the Court of Appeals of March 3rd, 1925, allowing writ of error in above cause of action:

February 6th, 1925, bill of particulars.
February 11th, 1925, summons issued.
February 13th, 1925, summons served.
February 20th, 1925, appearance specially for defendant motion to quash, and affidavit of G. W. Vierbuchen, in support thereof.
February 20th, 1925, affidavit of B. M. Knobel.
February 20th, 1925, order sustaining motion to quash and vacating summons.
March 3rd, 1925, order allowing writ of error.

EDW. L. HUNTER,
*Attorney for Plaintiff.*

11 Filed Mar. 5, 1925.

Municipal Court, District of Columbia.

United States of America, *ss:*

The President of the United States to the Honorable George C. Aukam, Judge of the Municipal Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Municipal Court, before you, between B. M. Knobel, plaintiff, and Seaboard Air Line Railway Company, a corporation, defendant, No. 113,935, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 20 days from the settling of the bill of exceptions, or within such additional time after the expiration of the 20 days as the court below or a judge thereof for sufficient cause shall allow; that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable George E. Martin, Chief Justice of the said Court of Appeals, the 3rd day of March, in the year of our Lord one thousand nine hundred and twenty five.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals*
*of the District of Columbia.*

Allowed by
JOSIAH A. VAN ORSDEL,
*Associate Justice of the Court of*
*Appeals of the District of Columbia.*

12 Municipal Court of the District of Columbia.

United States of America,
*District of Columbia, ss:*

I, Blanche Neff, Clerk of the Municipal Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 11, both inclusive, to be a true and correct transcript of the record, according to direction of counsel herein filed, copy of which is made part of this transcript, in cause, At Law No. 113935, wherein B. M. Knobel is plaintiff and Seaboard Air Line Railway Company, a corporation, is defendant, as the same that remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the City of Washington, in said District, this 20th day of March, 1925.

[Seal Municipal Court of the District of Columbia.]

BLANCHE NEFF,
*Clerk.*

Endorsed on cover: District of Columbia Municipal Court. No. 4309. B. M. Knobel, plaintiff in error, vs. Seaboard Air Line Railway Co., a corporation. Court of Appeals, District of Columbia. Filed Mar. 20, 1925. Henry W. Hodges, clerk.

FOR MR. JUSTICE ROBB.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED
SEP 23 1925
Henry W. Hodges
CLERK.

# Court of Appeals, District of Columbia.

APRIL TERM, 1925.

## No. 4309.

B. M. KNOBEL, PLAINTIFF IN ERROR,

*vs.*

SEABOARD AIR LINE RAILWAY CO., A CORPORATION.

## BRIEF OF DEFENDANT IN ERROR.

GEORGE E. HAMILTON,
JOHN J. HAMILTON,
GEORGE E. HAMILTON, JR.,
EDMUND BRADY,
HENRY R. GOWER,
*Attorneys for Defendant in Error.*

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

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# Court of Appeals, District of Columbia.

APRIL TERM, 1925.

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## No. 4309.

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B. M. KNOBEL, Plaintiff in Error,

*vs.*

SEABOARD AIR LINE RAILWAY CO., a Corporation.

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## BRIEF OF DEFENDANT IN ERROR.

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### Statement.

The writ of error in this case requires a review of the action of the Municipal Court in quashing service of process against the defendant foreign interstate railroad corporation in a suit by plaintiff in error, hereafter called plaintiff, for loss by delay in the carriage of cabbage from Florida to Potomac Yards, Virginia, under a contract not entered into in the District of Columbia nor to be performed there and not growing out of any transaction had in the District of Columbia.

The defendant in error, Seaboard Air Line Railway Company, hereafter called the defendant or Seaboard Company, is a corporation of the State of Virginia; it is a carrier engaged in interstate commerce and operates railroad lines in and among the States of Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama, but in the District of Columbia it owns no railroad, operates no trains, does not act as a carrier, and conducts no operations except for the purpose of soliciting traffic for a through route to the South, part of which, outside of the District of Columbia, it operates.

The defendant's position, upheld by the Municipal Court, is that the assumption of jurisdiction of this defendant in this suit by a court of the District of Columbia would be an undue burden on and an unreasonable obstruction of interstate commerce.

## The Record Shows No Exception Taken in the Municipal Court.

The attention of the Court is called to the fact that the record shows that the plaintiff in error failed to take an exception to the order or ruling of the Municipal Court (Rec., pp. 7, 8).

The Court said in National Bank *v.* Lincoln, 37 App. D. C., 254:

> "In the absence of any exception properly appearing in the record, there is nothing presented for this court to review. * * * The judgment of the court below is affirmed, with costs * * *."

And see Dimock *v.* Roberts, 54 App. D. C., 20.

Should the Court determine that the case is to be heard, notwithstanding the absence of an exception in the record, counsel for defendant respectfully insist that consideration of the case be strictly limited to the facts stated in the affidavit in the record. Had the plaintiff not conceded these facts, the plaintiff could have filed counter-affidavits and made an issue of fact; whereupon the motion to dismiss would have been overruled (Fischer *v.* Munsey Co., 44 App. D. C., 212; O'Donnell *v.* Beechnut Co., 45 App. D. C., 425) and the issue of fact would have been for trial. But the plaintiff made no such issue on the matters stated in the affidavit and the case comes to this Court on a question of law, with the facts in the affidavit admitted and unquestioned by the plaintiff.

The statement on page 8 of the brief for plaintiff, "The window of the office at 714 14th St., N. W., Washington, bears the symbols—'Ticket Offices'—'Seaboard Air Line Railway Company'—'Chesapeake & Ohio Railway Company'—and no mention is made of the Richmond, Fredericksburg & Potomac Railroad," and also the statement, on the same page, "but inasmuch as the name of the Richmond Company does not appear on the premises at 714 14th St., N. W.," are volunteered in the brief. These statements have no foundation in the record and are improperly in the brief for plaintiff.

Further, the matter on page 8 of brief for plaintiff concerns exclusively the sale of coupon tickets and no other blanks nor forms nor tickets except coupon tickets. This is shown by the reference to "coupon tickets" in the sixth line of page 8 and by the subsequent discussion on page 9 of mileage and special-form tickets. In discussing, then, the sale of coupon tickets on page 8 the statement is made that "inasmuch as the name of the Richmond Company does not appear on the premises at 714 14th St. N. W., the only deduction which can be made from this fact is that one is led to believe that he is contracting with the Seaboard Company alone." And further, on page 8 and the top of page 9, "here we have a corporation openly and continuously offering its wares—transportation—for sale to the public at an established office in Washington through its regularly constituted agents."

These statements are unfounded in and at variance with the record. The course followed by plaintiff has bound him to a concession of the facts set up in the affidavit in the record. And in respect of coupon tickets, the affidavit shows clearly that such tickets are sold by the Richmond Company, that the coupon tickets consist of a form of contract between the Richmond Company and the purchaser, and that on the coupons is indicated by printed legend their issue by the Richmond Company.

In the statement, then, on page 8 of brief for plaintiff matter entirely outside of the record is introduced (as to the legend on the window of an office), and from this statement thus improperly presented is drawn a deduction as to the sale of coupon tickets by the Seaboard Company which is entirely at variance with facts conceded by plaintiff in error showing sale by the Richmond Company.

On page 3 of plaintiff's brief it is stated: "From the affidavit of G. W. Vierbuchen, filed in support of motion to quash it is admitted," and under this suggestion of admission by the defendant, appears the following statement in paragraph 6 on page 5:

> "6. That the representatives of the defendant have for sale and sell tickets for passage over the lines of the Seaboard Company between certain points thereon when they have no printed coupon tickets by writing in on printed blank forms the initial point and destination on the Seaboard Lines."

No such admission is made by the defendant and no such matter appears in the affidavit and the statement is erroneous and misleading. The court is respectfully referred to the affidavit shown in the record on pages 2 to 5, inclusive, for a statement of the matter binding on both the plaintiff and the defendant.

The phrase, on page 9 of plaintiff's brief, "The business so conducted is not an incidental, isolated transaction but a regular continuing series of transactions," is a literal copy from the opinion in Wendell *v.* Holland Line, 40 App. D. C., at page 5, and, if it be intended as a statement of fact, is unsupported in the record.

## ARGUMENT.

### The Assumption of Jurisdiction by the Municipal Court Over This Case Would Unduly Burden Interstate Commerce and Would be Obnoxious to the Commerce Clause of the Constitution.

The Knobel case presents a matter not considered in prior decisions of this Court.

All cases heretofore determined by the Court of Appeals in respect of jurisdiction over foreign corporations have involved as the sole constitutional consideration the matter of due process of law—a question raised in the individual and private interest of the foreign corporation for a determination as to whether the corporation has been deprived of due process of law in being brought before the courts of the District of Columbia, and the constitutional provision involved has invariably been the Fifth Amendment to the Constitution.

In the Knobel case the shipment involved did not originate in the District of Columbia and was not destined there and a constitutional question new to the Court of Appeals in this type of case, arises—one in which not only the foreign corporation itself is interested, but the Government and the public as well. That question is whether assumption of jurisdiction by the Municipal Court over the defendant unduly burdens interstate commerce, and the constitutional provision involved is Article I, Section 8, paragraph 3. The approach to the question whether assumption of jurisdiction in this case would unduly burden interstate commerce should be made in the light of the commerce clause of the Constitution and the announcements of the recent Federal railroad policy made in acts of Congress and decisions of the United States courts.

Federal control of railroads apparently gave new information and experience to the Government in respect of the needs and difficulties of the railroads, and recent legislation shows a Federal railroad policy designed to keep the railroads going, to facilitate operation, to aid and encourage economy, to increase and conserve railroad revenue.

In the New England Division case, 261 U. S., at page 189, Mr. Justice Brandeis wrote:

> "Transportation Act 1920, introduced into Federal legislation a new railroad policy. * * * The 1920 Act sought also to insure adequate transportation service. * * * And to attain it, new rights, new obligations, new machinery were created. * * * Prominent among them are those specially designed to secure a fair return on capital devoted to transportation service. * * *"

The control of the Government over the railroads and the pecuniary interest of the Government in them goes to a surprising length in the recapture clause of the Transportation Act:

> " * * * That any carrier which receives such an income so in excess of a fair return (otherwise indicated to be about six per cent) shall hold such part of the excess, as hereinafter prescribed, as trustees for and shall pay it to the United States."

In sustaining the constitutionality of this recapture clause, Chief Justice Taft wrote in Dayton-Goose Creek case, 263 U. S., at page 478:

> " * * * The new act (Transportation Act) seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. * * * To regulate in the sense intended is to foster, protect and control the commerce with appropriate regard of those who are immediately concerned, as well as the public at large, and to promote its growth and insure its safety."

On page 6 of the brief for plaintiff in error are cited, as applicable to the Knobel case, five decisions of this Court, as follows:

> Wendell *v.* Holland Line, 40 App. D. C., 1.
> Chase Bag. Co. *v.* Munson Line, 54 App. D. C., 169.
> Toledo Co. *v.* Miller, 38 App. D. C., 237.
> Ferguson Co. *v.* Coal & Coke Co., 33 App. D. C., 159.
> Ricketts *v.* Sun Co., 27 App. D. C., 222.

In none of these cases was there presented the question in the Knobel case, that of the burden on interstate commerce by assumption of jurisdiction. The question in the cases cited concerned the right of a foreign corporation to be free from suit in the District of Columbia under the due-process clause of the Constitution. The differentiation of cases of jurisdiction over foreign corporations into the familiar class involving the due-process clause and the more recently recognized class of cases involving a burden on interstate commerce is clearly made by Mr. Justice Brandeis in Davis *v.* Farmer's Co-operative Equity Company, 262 U. S., 312. And in the Munson Line case, above, this Court suggested that the Davis case, although it was discussed by the Court, was not entirely applicable to the Munson case because the Davis case involved matter of burden on interstate commerce, indicating that the ground of the Munson case was the due-process clause. In these five cases there is discussion of what may constitute "doing business" by a foreign corporation, but what may be "doing business" in a case under the due-process clause may not be "doing business" in a case under the commerce clause.

## The Knobel Case is Within the Principle of the Decision of the Supreme Court of the United States in Davis v. Farmers Co-operative Equity Company.

In Davis *v.* Farmers' Co-operative Equity Company, 262 U. S., 312, the Court, through Mr. Justice Brandeis, held that the commerce clause of the Constitution of the United States was violated by a statute of Minnesota when construed and applied to give jurisdiction to Minnesota courts of a Kansas interstate railroad corporation (not operating in Minnesota) in a suit, by a non-resident of Minnesota, involving transportation in Kansas, in which service of process was made on defendant's traffic soliciting agent located in Minnesota.

The Court said:

> "Solicitation of traffic by railroads, in States remote from their lines, is a recognized part of the business of interstate transportation. * * *
>
> "As construed by the highest court of Minnesota, this statute compels every foreign interstate carrier to submit to suit there as a condition of maintaining a soliciting agent within the State. * * * Jurisdiction is not limited to suits arising out of business transacted within Minnesota. * * * It (jurisdiction) is asserted, whatever the nature of the cause of action, wherever it may have arisen, and although the plaintiff is not, and never has been a resident of the State. * * * This condition imposes upon interstate commerce a serious and unreasonable burden which renders the statute obnoxious to the commerce clause. * * *
>
> "That the claims against interstate carriers for personal injuries and for loss and damage of freight are numerous; that the amounts demanded are large; that in many cases carriers deem it imperative

or advisable to leave the determination of their liability to the courts; that litigation in States and jurisdictions remote from that in which the cause of action arose entails absence of employees from their customary occupations; and that this impairs efficiency in operation, and causes, directly and indirectly, heavy expense to the carriers; these are matters of common knowledge. Facts, of which we also take judicial notice, indicate that the burden upon interstate carriers imposed specifically by the statute here assailed is a heavy one; and that the resulting obstruction to commerce must be serious. During Federal control absences of employees incident to such litigation were found, by the Director General, to interfere so much with the physical operation of the railroads, that he issued General Order No. 18 (and 18 A) which required suit to be brought in the county or district where the cause of action arose or where the plaintiff resided at the time it accrued. That order was held reasonable and valid in Alabama Co. *v.* Journey, 257 U. S., 111. The facts recited in the order, to justify its issue, are of general application, in time of peace as well as of war. The fact that the business carried on by a corporation is entirely interstate in character does not render the corporation immune from the ordinary process of the courts of a State. * * * The requirements of orderly, effective administration of justice are paramount. * * * but orderly, effective administration of justice clearly does not require that a foreign carrier shall submit to a suit in a State in which the cause of action did not arise, in which the transaction giving rise to it was not entered upon, in which the carrier neither owns nor operates a railroad, and in which the plaintiff does not reside. The public and the carriers are alike interested in maintaining adequate, un-

> interrupted transportation service at reasonable cost. This common interest is emphasized by Transportation Act, 1920, which authorizes rate increases necessary to ensure to carriers efficiently operated a fair return, on property devoted to the public use. * * * Avoidance of waste, in interstate transportation, as well as maintenance of service, have become a direct concern of the public. With these ends the Minnesota statute, as here applied, unduly interferes. By requiring from interstate carriers, general submission to suit, it unreasonably obstructs, and unduly burdens, interstate commerce.
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> "The case at bar resembles, in its facts, but it is not identical with Missouri, Kansas & Texas Co. *v.* Reynolds, 255 U. S., 565, and St. Louis Southwestern Ry. Co. *v.* Alexander, 227 U. S., 218. In the former, the validity of a similar Massachusetts statute was sustained in a *per curiam* opinion. In the latter, jurisdiction was upheld in the absence of a statute concerning solicitation. But in both cases, the only constitutional objection asserted was violation of the due process clause. * * * Since we hold that the Minnesota statute, as construed and applied, violates the commerce clause we have no occasion to consider whether it also violates the Fourteenth Amendment."

It is submitted that the Davis case will be found to state the proper rule for the determination of the Knobel case. The plaintiff in error, to avoid the effect of the Davis case, will claim that there was greater scope to the activity of the Seaboard Company in the District of Columbia than there was on the part of the defendant in the Davis case. On the record in this case such a claim can only be based upon two matters, (*a*) the use of the skeleton blank form, and (*b*) the issue of interchangeable mileage scrip. The plan of sale of coupon tickets in the District, not by the Seaboard Company, but by the Richmond, Fredericksburg & Potomac Company, and the maintenance of an office and the employment of agents to solicit traffic and of clerks are shown by Green *v.* C., B. & Q. Co., 205 U. S., 530, and P. & R. *v.* McKibben, 243 U. S., 264, not to furnish grounds for jurisdiction. The two matters set out above are the only new and undetermined elements in this case. Consideration of these matters follows.

(*a*) The function of the employees of the Seaboard Company, mentioned in paragraph 5 of the affidavit, is to solicit passengers for the through route to the South, of which the Seaboard Company operates a part, outside of the District of Columbia. And the affidavit shows plainly that the acts of these representatives are strictly limited to the inducement of passengers to purchase of the Richmond Company coupon tickets for the through route rather than the actual performance of an independent business for the production of revenue for the Seaboard. Instead of the usual local ticket office equipped with complete supplies of printed local card tickets, inclusive of all stations on the line and showing initial and destination points and requiring to complete for delivery simply the impress of a date stamp, the affidavit shows that these representatives had no local card tickets; that they had a blank or "skeleton form," which could be made up by filling in by writing the initial and destination points. This arrangement is obviously not a general ticket sale; it is not an economical, efficient way of handling a revenue-producing business; it is a service of accommodation and inducement. No delivery of tickets for general sale could thus be carried on; it is clearly designed for the particular, exceptional case; it carries the indicia of the offer of a special favor to induce the purchase of a coupon ticket for the through route.

Assume that a prospective purchaser of a coupon ticket for the through route wishes to reach a destination on a line branching off from the through route; he finds that at the junction point on the through route his time for purchasing another ticket and rechecking his baggage is short, or that he will arrive at an inconvenient time; the passenger may be a lady who may find it burdensome to make further arrangements at the junction point. If the Seaboard representatives, under such circumstances, by the use of the skeleton form, procure the sale by the Richmond Company of a ticket for any part of the through route the transaction comes within any fair understanding of the idea of solicitation.

(*b*) The situation is just the same with respect to the scrip mileage. A prospective passenger wishes to proceed on a route branching from the through route; the branch route may consist of the lines of more than one railroad. The interchangeable mileage book is good for passage over all lines, and by furnishing the prospective passenger with a mileage book, wherewith to continue his journey, a sale may be induced of a coupon ticket on a part of the through route.

The affidavit shows the through route to the South, of which the Seaboard operates a part, to be a competitive route—that is, that other railroad companies operate routes in the same general direction, and if a passenger chooses the Seaboard route instead of one of the several other competing routes the Seaboard Company gains revenue and its competitors fail to gain revenue. The Seaboard branch lines to which reference has been made may be assumed to reach non-competitive territory—that is, points reached only by the Seaboard Company and not reached by other roads. The revenue from the sale of such tickets necessarily and inevitably comes to the Seaboard Company and the Seaboard Company need make no effort to gain it. Ticket offices on the actual rails of the Seaboard Company would be sufficient for the sale of such tickets. The expense of maintaining an office for the sale of such tickets in Washington, D. C., would not be justified. And if mileage and forms for use on such non-competitive lines be furnished to passengers in Washington as an inducement to secure choice of the through route to the South, such furnishing is no more than soliciting.

If the Seaboard Company sold in the District of Columbia tickets to points in competitive territory, or on routes where there is competition, it might be considered such a doing of business as would give jurisdiction; but the affidavit shows that such tickets are sold in the District by the Richmond Company and not by the Seaboard Company. And such few sales as the Seaboard Company may make in the District of tickets into exclusive Seaboard territory is distinctly stated to be as an accommodation and to induce the purchase of a coupon ticket from the Richmond Company on competitive routes; in other words, such acts are the solicitation of traffic.

In Green *v.* C., B. & Q., 205 U. S., 530, the court said:

> "Occasionally he sold to railroad employees, who already had tickets over intermediate lines, orders for reduced rates over the defendant's lines * * * The business shown in this case was in substance nothing more than that of solicitation."

If the plaintiff did not care to concede in its entirety the statement of fact made in the affidavit in the record, the plaintiff had only to take issue on the matters in the affidavit. In the affidavit, in the only reference made to the matter of the mileage scrip, it is stated that its use was in furtherance of the securing of business for the lines of the defendant; and in the only reference to the blank form it is stated that the use of the form was "on occasion" and as an accommodation to intending passengers by way of avoiding delay or difficulty at some station on the Seaboard, and that the reason and purpose of this was to favor patrons of the through route, to induce the selection of the through route, and that all of this was incident to the solicitation of traffic. By the course taken, the plaintiff is precluded from any claim that the defendant did more in the District of Columbia than to solicit traffic.

## The Application of the Davis Case to the Knobel Case.

The Davis case stands unaffected by subsequent decisions or legislation, as far as counsel for defendant have been able to ascertain.

It is urged in plaintiff's brief that the Davis case is not applicable to the Knobel case for the reason that an act of Congress and not a State statute is involved.

It is true that the statute involved in the Davis case was a law of the State of Minnesota and in the Knobel case service was attempted to be made under Section 1537 of the Code of Law for the District of Columbia. But, under the decision in the Davis case, Section 1537 must be construed, we submit, so that soliciting traffic by a foreign railroad in the District of Columbia will not be held to be "doing business" within the meaning of that section. If the section cannot be so construed, it is invalid under the Davis case, if "construed and applied" to give jurisdiction in a case in which the facts are similar to those of the Davis case. We have shown the Knobel case to be within the principle of the Davis case; in the Davis case the Court held the Minnesota statute, "as construed and applied" in that case, to be in violation of the commerce clause; and if Section 1537 be construed and applied to give jurisdiction in the Knobel case, Section 1537 so applied also violates the commerce clause.

The power of Congress to "exercise exclusive legislation in all cases whatsoever" over the District of Columbia would not give validity to the section so "construed and applied," for the matter affected by the assumption of jurisdiction by the Municipal Court in the Knobel case is outside of the District of Columbia; it is interstate commerce among the States of Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama. What in the Davis case was declared to be a burden on interstate commerce among certain Southwestern States is similarly, in the Knobel case, a burden on interstate commerce among the six States mentioned. The Court of Appeals in Block *v.* Hirsh, 50 App. D. C., at page 60, said:

> "* * * that the provisions of the Constitution which protect persons and property are uniform in their operation throughout the United States."

The provisions of the Constitution in relation to interstate commerce must also be uniform throughout the United States. It will hardly be urged that the intent of Congress in enacting Section 1537 of the Code was to make a general regulation of interstate commerce, or that the purpose was to give jurisdiction to District of Columbia courts of all interstate railroads which might maintain soliciting agents in the District, for then the western railroads, for example, which have no need of soliciting agents in the District of Columbia, would be unhampered in the maintenance of solicitors in the territory (away from their lines) where prospective passengers for their lines might be found, while southern railroads, outside of the District of Columbia, could not solicit in the District (their best territory for securing traffic) without becoming subject to the jurisdiction of District of Columbia courts. This would result in a regulation of interstate commerce not uniform throughout the United States.

But it is submitted that there need be no question of the invalidity of Section 1537 of the Code. The section is susceptible of a construction which will give effect to the rule of the Davis case. It may well be that an act which might be held to be "doing business" in cases in which the question is purely one of due process of law, raised by the corporation in its private capacity, would not be held to constitute "doing business" when the question is one of burden on or obstruction to interstate commerce. Mr. Justice Holmes, in American Co. *v.* Commissioners, 224 U. S., 491, wrote:

> "But it needs no authority to show that the same phrase may have different meanings in different connections."

Section 1537 of the Code should in this case be construed so that the rule of the Davis case may be applied.

The plaintiff admits (brief for plaintiff, page 14) that the Supreme Court in the Davis case did not attempt to say what constitutes "doing business." And likewise in the Knobel case it is not a question of whether the defendant was doing business in the District, but whether interstate commerce will be burdened by compelling the defendant to submit to jurisdiction of the Municipal Court of the District of Columbia, where it does no more than solicit traffic, which, under the Davis case, it has the right to do. All of the Court of Appeals cases cited in the brief for plaintiff are therein correctly classed as decisions relating to the "doing business" by a foreign corporation. But, as has been said, in no one of these cases is considered the question of burden on interstate commerce raised in the Knobel case, and because this question is not considered in these cases they are not determinative of the Knobel case. The only two cases cited in brief for plaintiff which do involve the matter of burden on interstate commerce are the Davis case, relied upon by the defendant, and the Maverick Mills case, 294 Federal, 404. But the Maverick case is inapplicable to the Knobel case, because in the Maverick case the plaintiff was a resident of Massachusetts and the shipment was consigned to the plaintiff in Massachusetts. In the Knobel case while the plaintiff resides in the District of Columbia, the shipment was not destined to the District of Columbia.

## Conclusion.

The decision in the Davis case definitely establishes the right of the defendant to solicit traffic in the District of Columbia without becoming subject to the jurisdiction of District of Columbia courts, and it clearly appears from the affidavit filed by the defendant that its activities in the District are confined to the solicitation of traffic.

It is respectfully submitted that the action of the Municipal Court in quashing service of process on the defendant was correct, and that the judgment of that court should be affirmed.

Respectfully submitted.

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